

# Property of Husband and Wife in Connecticut

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## *A Guide to Resources in the Law Library*

- “Neither husband nor wife shall acquire by the marriage any right to or interest in any property held by the other before or acquired after such marriage, except as to the share of the survivor in the property as provided by sections 45a-436 and 45a-437.” CONN. GEN. STAT. § 46b-36 (2003).
- **Joint duty of support:** “The evolutionary changes in married women’s rights that enabled them to acquire and dispose of property also generated changes in the obligations of each spouse to the marriage. In the evolutionary process the primary obligation of the husband to provide support for his wife and children under the common law evolved into a joint duty of each spouse to support the family. [Conn. Gen. Stats.] Section 46b-37(b) provides the basic statutory predicate for this change. Article fifth of the Connecticut constitution, amending 20 of article first of the Connecticut constitution, however, provides the constitutional underpinnings for contemporary departure from the primary duty of one spouse to the joint duty of each spouse to support his or her family. It must also be recognized that even when the husband had the primary duty to support his wife, his duty was not absolute and unyielding.” Yale University School Of Medicine v. Esther Collier, 206 Conn. 31, 35-36, 536 A.2d 588 (1988).

### Sections in this chapter:

§ 1 Married Women’s Act in Connecticut	2
§ 2 Property Rights of Husband and Wife	5

### Tables in this chapter:

Table 1 Joint Duty of Support	8
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### Treated elsewhere:

- Property rights upon death of spouse in an ongoing marriage *see* Rights of surviving spouse
- Property rights upon dissolution, legal separation or annulment *see* Equitable distribution of marital property in Connecticut

## Section 1

# Married Women's Act in Connecticut

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### **SCOPE:**

Bibliographic sources relating to the history and effect of the passage of the Married Women's Act of 1877 in Connecticut.

### **DEFINITION:**

- “We think that in enacting this law the State adopted a fundamental change of public policy . . . that in every marriage contracted since April 20th, 1877, husband and wife alike retain the capacity of owning, acquiring and disposing of property, which belongs to unmarried persons; that the power of contracting, incident to such capacity, necessarily follows, and that the legal status of husband and wife involves the capacity to contract with each other and with others. Under the law of status which the Act of 1877 abolished, the wife could not contract with her husband or any one else, because her legal identity and capacity of owning property attached to the husband, and for the same reason the husband could not contract with his wife. Mathewson v. Mathewson, 79 Conn. 23, 35, 63 A. 285 (1906)
- “Her identity is no longer merged in that of her husband. She is recognized as having a complete legal entity of her own, with rights of her own, and enforceable as her own.” Marri v. Stamford Street Railroad Co., 84 Conn. 9, 22, 78 A. 582 (1911).

### **STATUTES:**

- CONN. GEN. STAT. (2003).
  - § 46b-36 “. . . The separate earnings of the wife shall be her sole property. She shall have power to make contracts with her husband or with third persons, to convey to her husband or to third persons her real and personal estate and to receive conveyances of real and personal estate from her husband or from third persons as if unmarried. She may bring suit in her own name upon contracts or for torts and she may be sued for a breach of contract or for a tort; and her property, except such as is exempt by law, may be taken on attachment and execution, but shall not be taken for the debts of her husband, except as provided in section 46b-37. . . .”
  - § 46b-37.
    - (a). “Any purchase made by either a husband or wife in his or her own name shall be presumed, in the absence of notice to the contrary, to be made by him or her as an individual and he or she shall be liable for the purchase.”
    - (b). “Notwithstanding the provisions of subsection (a) of this section,

it shall be the joint duty of each spouse to support his or her family, and both shall be liable for: (1) The reasonable and necessary services of a physician or dentist; (2) hospital expenses rendered the husband or wife or minor child while residing in the family of his or her parents; (3) the rental of any dwelling unit actually occupied by the husband and wife as a residence and reasonably necessary to them for that purpose; and (4) any article purchased by either which has in fact gone to the support of the family, or for the joint benefit of both.”

### **HISTORY:**

- Public Act 1877, Chapter 114. "An Act in Alteration of the Act Concerning Domestic Relations."
- Mathewson v. Mathewson, 79 Conn. 23, 35 (1906). History of married women's act in Connecticut.

### **CASES:**

- Wendt v. Wendt, 59 Conn. App. 656, 687-688, 757 A.2d 1225 (2000). "As the court in this case rightly stated: 'The plaintiff would have the decision in this case take its place along with the great events making changes in women's rights: the 1848 Seneca Falls [New York] Convention; the Married Women's Act of 1877 in Connecticut [Public Acts 1877, c. 114, now General Statutes § 46b-36]; the nineteenth amendment to the United States Constitution, ratified in Connecticut on September 14 and 20, 1920; and the ERA to the Connecticut constitution, adopted November 27, 1974. This historical progression, while compelling, does not warrant the results the plaintiff seeks. The plaintiff seeks, by judicial fiat, to declare unconstitutional, statutes in order to correct an economic disorder.' We agree with the court and conclude that the plaintiff has not successfully proven a violation of the ERA."
- Yale University School of Medicine v. Collier, 206 Conn. 31, 34, 536 A.2d 588 (1988). "An enhancement of the wife's legal status had been brought about by the enactment of the Married Women's Act in 1877. See Public Acts 1877, c. 114 (now General Statutes 46b-36). This legislation enabled a married woman to control her own property and to sue and be sued in the same manner as her husband."
- Dzenutis v. Dzenutis, 200 Conn. 290, 294, 512 A.2d 130 (1986). "[W]e had held in the analogous husband-wife context that the enactment of the Married Women's Act of 1877 gave a wife separate and independent legal status and thus abrogated the common law rule of spousal immunity both for intentional torts; Brown v. Brown, 88 Conn. 42, 47, 89 A. 889 (1914); and for negligent ones. Bushnell v. Bushnell, 103 Conn. 583, 587, 131 A. 432 (1925)."
- Mesite v. Kirchenstein, 109 Conn. 77, 86, 145 A. 753 (1929). "The suggested analogy between the action by a wife against her husband for personal injuries suffered through his negligence, which we permit, and a like action by a child against his parent is not a close one. We based our decision in Brown v. Brown, 88 Conn. 42, 89 A. 889, upon the Married Women's Act, which took effect April 20th, 1877, under which, as we construed that Act, the wife in marriages thereafter contracted, retained her own legal identity, formerly merged in that of her husband, and the logical result of that changed status gave to her the right to maintain an action against her husband for a tort committed upon her person as she might against a third person who had committed a like tort. Bushnell v. Bushnell, 103 Conn. 583, 131 A. 432. The Act gave the wife a separate and independent legal identity and conferred upon her the same rights arising out of contracts or torts that her husband possessed."

- Brown v. Brown, 88 Conn. 42, 45 (1914). “. . . the right of husband and wife to sue each other for breach of contract is one of the consequences of the new status established by the Act.”
- Marri v. Stamford Street Railroad Company., 84 Conn. 9 (1911). “Women married on or after April 20th, may sue for and recover in her own name compensation for all personal, physical injuries sustained by her and negligently caused by another.”

**WEST KEY  
NUMBERS:**

- *Husband and Wife*
  - 111. Married Women’s Property Act
  - 112. \_\_\_\_\_. Constitutionality
  - 113. \_\_\_\_\_. Construction and operation in general
  - 114. \_\_\_\_\_. Retroactive operation

**TEXTS &  
TREATISES:**

- 7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, CONNECTICUT PRACTICE, FAMILY LAW AND PRACTICE WITH FORMS (1999).
  - § 7.1 Married Women's Property Act
  - § 7.2 Property Rights of Married Persons
  - § 7.3 Authority of Spouses to Act for Each Other
  - § 7.4 Property Acquired During the Marriage
  - § 7.5 Partition

**ENCYCLOPEDIAS:**

- 41 C.J.S. *Husband and Wife* (1991).
  - § 14. Married Women’s Act
- 41 AM. JUR. 2d . *Husband & Wife* (1995).
  - § 17. Interspousal debts and liabilities
  - §§ 18-27. Property rights and interests

**LAW REVIEWS:**

- *Law of the domicile, capacity of a married woman to make a personal contract*, 27 YALE LAW JOURNAL 669 (1912).

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# Property Rights of Husband and Wife

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- SCOPE:** Bibliographic sources relating to the property rights of each spouse in an ongoing marriage.
- SEE ALSO:**
- Alimony
    - § 2.1. Duty to support spouse
  - Child Support
    - § 8.1. Duty to support spouse
- DEFINITIONS:**
- **Joint duty of support:** “It is clear that the statute [Conn. Gen. Stats. § 46b-10, now § 46b-37] imposes a joint liability upon the husband and the wife regardless of which one of them made the contract for the services.” Maislin v. Lawton, 30 Conn. Sup. 593, 594, 314 A.2d 783 (1973).
  - **Necessities:** “The parent’s and spouse’s duty to support his family extends to the provision of necessities, that is, suitable clothing, lodging, food and medical attendance.” United States v. Edwards, 572 F. Supp. 1527, 1537 (1983).
- STATUTES:**
- CONN. GEN. STAT. (2003).
    - § 46b-36. Wife and husband property rights not affected by marriage
    - § 46b-37. Joint duty of spouses to support family. Liability for purchases and certain expenses. Abandonment.
    - § 45a-631. Minor’s property to be received or used only by guardian of estate. Release.
- CASES:**
- Cherniack v. Home National Bank & Trust Co., 151 Conn. 367, 368, 198 A.2d 58 (1964). “It is important to bear in mind in this connection that under Connecticut law neither husband nor wife acquires, by virtue of the marriage, any interest in the real or personal property of the other during that other’s lifetime.”
  - North v. North, 183 Conn. 35, 39-40, 438 A.2d 807 (1981). “Although a party may have received property through inheritance, assigning such property to the other spouse does not violate § 46b-36.”
  - Wagner v. Mutual Life Insurance Co., 88 Conn. 536, 542, 91 A. 1012 (1914). “From the finding it appears that Mrs. Wagner always retained the possession and control of, and collected the income from, her personal property free from the domination and supervision of her husband; and that as to the proceeds of the securities sold and loaned him, and all other loans

made, he agreed to repay the same with interest. It is also found that Mr. Wagner always treated the moneys loaned him by Mrs. Wagner, and all of her securities, as her sole and separate estate.”

#### **ACT FOR EACH OTHER**

- Botticello v. Stefanovicz, 177 Conn. 22, 27, 411 A.2d 16 (1979).  
“Moreover, the fact that one spouse tends more to business matters than the other does not, absent other evidence of agreement or authorization, constitute the delegation of power as to an agent.”
- Schneidau v. Manley, 131 Conn. 285, 288, 39 A.2d 885 (1944). “The burden rested on the plaintiff to prove that Manley [husband] in agreeing upon the sale of the property, in so far as his wife’s undivided interest therein was concerned, was acting as her agent with the scope of his authority.”
- Cyclone Fence Co. v. McAviney, 121 Conn. 656, 659, 186 A. 635 (1936).  
“The marital relation per se bestowed no authority upon the husband to act as agent for the wife or to enter into a binding contract for her without her consent.”

#### **PRESUMPTIONS**

- Franke v. Franke, 140 Conn. 133, 139, 98 A.2d 804 (1953). “If the purchase price is paid by one spouse and the conveyance is taken in the name of the other, there is a presumption that a gift was intended . . . This presumption, however is one of fact and not of law and may be rebutted.”
- Newman v. Newman, 134 Conn. 176, 179, 55 A.2d 916 (1947). “Where one spouse puts up a building on land owned in common by husband and wife, without any understanding or agreement that the other shall share the expense, the presumption that it was for the joint benefit of both must prevail.”

#### **CONVEYANCES**

- New Haven Trolley & Bus Employees Credit Union v. Hill, 145 Conn. 332, 334, 142 A.2d 730 (1958). “Under our law the legal effect of such a conveyances [to husband and wife] is as though the grantees were unrelated.”
- Hughes v. Fairfield Lumber and Supply Co., 19 Conn. Supp. 138, 139, 110 A.2d 730 (1955). “In this stat, husband and wife takes as joint tenants and a conveyance of his interest by one of them is valid and effectual.”

#### **WEST KEY NUMBERS:**

##### *Husband and Wife*

#68-76 Property & Conveyances

#110 et seq. Wife’s separate estate

#### **DIGESTS:**

- U.S. SUPREME COURT DIGEST: *Husband and Wife* §§ 16-31  
§§ 16-23. Wife’s separate estate or business  
§ 25. Contracts with or conveyances to each other  
§§ 26-31. Conveyances or mortgages to third person
- ALR DIGEST: *Husband and Wife*

#### **ENCYCLOPEDIAS:**

- 41 C.J.S. *Husband & Wife* §§ 10-17 (1991).  
§13 Wife’s separate estate in general  
§15 Power to contract and convey  
§16 Liabilities

- §17 Rights and liabilities of husband
- 41 AM. JUR. 2d . *Husband & Wife* (1995).  
Property rights and interests §§18-61
- Annotation, *Rights of married woman as creditor of husband*, 16 L.Ed. 416

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**Table 1 Joint Duty of Support**

<b>Joint Duty of Spouses To Support Family</b> Conn. Gen. Stats. § 46b-37 (2003)	
Purchases by spouse	(a) Any purchase made by either a husband or wife in his or her own name shall be presumed, in the absence of notice to the contrary, to be made by him or her as an individual and he or she shall be liable for the purchase.
Necessities	(b) Notwithstanding the provisions of subsection (a) of this section, it shall be the joint duty of each spouse to support his or her family, and both shall be liable for: (0) The reasonable and necessary services of a physician or dentist; (1) hospital expenses rendered the husband or wife or minor child while residing in the family of his or her parents; (2) the rental of any dwelling unit actually occupied by the husband and wife as a residence and reasonably necessary to them for that purpose; and (3) any article purchased by either which has in fact gone to the support of the family, or for the joint benefit of both.
Abandoned spouse	(c). Notwithstanding the provisions of subsection (a) of this section, a spouse who abandons his or her spouse without cause shall be liable for the reasonable support of such other spouse while abandoned.
Separation	(d). No action may be maintained against either spouse under the provisions of this section, either during or after any period of separation from the other spouse, for any liability incurred by the other spouse during the separation, if, during the separation the spouse who is liable for support of the other spouse has provided the other spouse with reasonable support.
Abandonment without cause	Abandonment without cause by a spouse shall be a defense to any liability pursuant to the provisions of subdivisions (1) to (4), inclusive, of subsection (b) of this section for expenses incurred by and for the benefit of such spouse. Nothing in this subsection shall affect the duty of a parent to support his or her minor child.